IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14809 of 2004
WITH
SPECIAL CIVIL APPLICATION No. 22553 of 2007
TO
SPECIAL CIVIL APPLICATION No. 22836 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARTI CELLULAR LTD. & 1 - Petitioner(s)
Versus
COLLECTOR & ADDL.SUPDT.OF STAMPS & 1 - Respondent(s)

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Appearance :

MR SHALIN N MEHTA for Petitioner(s) : 1 - 2.

IN SCA NOS.14809/04 WITH 22553 TO 22646 OF 2007 MR.SUNIT SHAH LEARNED GP WITH MS.MD MEHTA LEARNED AGP for respondent(s)

IN SCA NOS.22647 TO 22741 OF 2007 MR.SUNIT SHAH LEARNED GP WITH MS.NISHA PARIKH LEARNED AGP for respondent(s)

IN SCA NOS. 22742 TO 22836 OF 2007 MR. SUNIT SHAH LEARNED GP WITH MR.DIPEN DESAI LEARNED AGP for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 05/09/2007

ORAL JUDGMENT

1. **RULE** in Special Civil Application Nos.22553 to 22836 of 2007 of which service is waived on behalf of the respondents by learned Government Pleader along with learned Assistant Government Pleaders.

2. By way of all these petitions, the petitioner-Company has, invoking Article 226 of the Constitution, sought to challenge identical notices dated 01.10.2004,04.10.2004,05.10.2004 and 06.10.2004, totaling 285 notices issued under the provisions of Section 39(1)(b) of the Bombay Stamp Act, 1958 (for short, “the Act”). The Collector and Additional Superintendent of Stamps, Gujarat State has, by the impugned notices, called upon the petitioners to show-cause as to why deficit stamp duty exceeding total Rs.46,67,899/- should not be recovered with penalty of 10 times the amount of deficit stamp duty and fixed date of hearing in the year 2004. It was submitted by learned counsel Mr.Shalin Mehta, appearing for the petitioners, that the authority issuing show-cause notices had already made up its mind while the petitioners disputed the finding that agreements in question were lease agreements. It was further submitted that the agreements in question, upon which stamp duty was sought to be imposed, were in fact part of the main agreement which was in the nature of

leave and licence agreement on which proper stamp duty was affixed. He further submitted that in case of the authority not accepting the statements of facts and legal contentions of the petitioners, the only further remedy available to the petitioners would be that of approaching the Chief Controlling Revenue Authority under the provisions of Section 53 of the Act, which was a cumbersome procedure and involved pre-deposit of 25% of the amount which may be determined to be due from the petitioners. Therefore, learned counsel submitted that the present petitions were required to be heard and disposed on merits even as the relevant facts along with the documents were placed on record.

3. Relying upon the affidavit-in-reply of Additional Superintendent of Stamps, Gujarat State, learned A.G.P. Ms.M.D. Mehta submitted that the petitions were premature in so far as the petitioner is, by the impugned notices, asked to show reasons why deficit stamp duty should not be recovered with penalty. Instead of presenting their case before the concerned authority, the petitioners have rushed to this Court without availing the opportunity to approach before the authorities concerned. It was submitted that the petitioners had the opportunity to submit all the contentions, including the contention raised in

the present petitions, before the authority and after considering them, the authority has to decide the matters on merits. Even thereafter, if the petitioners were aggrieved, they had the alternative remedy of preferring revision applications under the provisions of Section 53 of the Act. It was, on that basis, submitted that the petitioners had sought to by-pass the due procedure of law and the petitions were required to be dismissed only on that ground.

4. During the course of arguments, it was clarified on behalf of the respondents that the authority concerned will consider all the contentions of the petitioners before either imposing the liability of stamp duty or penalty thereon and, in case of necessity, the matters shall be referred, under the provisions of Sub-Section (2) of Section 53 of the Act to the Chief Controlling Revenue Authority, for the purpose of final adjudication of the matters; and it would be complete and proper adjudication of the entire matter under the statutory provisions after which the parties may have recourse, if required, to the extraordinary writ jurisdiction of this Court. It was also fairly conceded that the legal issue involved in the case of the petitioners required leading and appreciation of evidence for arriving at proper findings of fact

on the basis of which appropriate Articles of the Schedule to the Act could be applied.

5. Therefore, in the peculiar facts and circumstances of the case, petitions are partly allowed with the direction that the impugned notices dated 01.10.2004, 04.10.2004, 05.10.2004 and 06.10.2004 shall stand quashed in so far as the dates mentioned therein for showing cause have already expired and fresh notices in the same terms shall be presumed to have been issued and hearing fixed on 06.10.2007 or such other subsequent date as may be intimated to the petitioner by the Collector concerned. The Collector concerned shall, after giving reasonable opportunity of hearing to the petitioner, make an order giving reasons therefor. It was agreed and understood that, in case of necessity, the date fixed for hearing may be varied by advance intimation by the Collector to the petitioners. In case it is deemed proper and necessary, he would draw up a statement of case and refer it to the Chief Controlling Revenue Authority along with his own opinion under the provisions of Section 53 of the Act. It goes without saying that the respondents will not initiate any process of coercive recovery before the aforesaid adjudication process is over. It is also needless to clarify that the

above order is made on the basis of limited consensus without entering into merits of the contentions canvassed in the petition. Rule is made absolute accordingly and interim relief is vacated with no order as to costs.

(D.H.WAGHELA, J.)

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